

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

ANDREW GREGORY SPOTTED ELK,

Plaintiff,

vs.

TAYLOR YOST,

Defendant.

4:17-CV-04097-LLP

ORDER GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
ON APPEAL

Plaintiff, Andrew Gregory Spotted Elk, is an inmate at the South Dakota State Penitentiary in Sioux Falls. On July 29, 2019, Spotted Elk filed a notice of appeal and a motion to appoint counsel. Dockets 25, 26.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “files an appeal . . . [is] required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). This obligation arises “‘the moment the prisoner . . . files an appeal.’” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). Therefore, “‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’” *Id.* (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

*Henderson* sets forth the procedures to be used to assess, calculate, and collect appellate filing fees in compliance with the PLRA. *Id.* at 483. Plaintiff has not filed the requisite paperwork to proceed in forma pauperis or paid the appellate filing fee. “If the district court does not receive

a certified copy of the prisoner's prison account within 30 days of the notice of appeal, it shall calculate the initial appellate filing fee at \$35 or *such other reasonable amount warranted by available information[.]*" *Id.* at 485 (emphasis added). An initial partial filing fee of \$35 is reasonable.

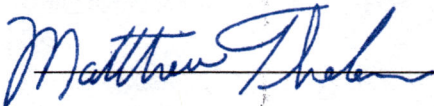
Spotted Elk also moves the court to appoint him counsel. Docket 25. This Court, however, cannot appoint counsel to litigants before the Eighth Circuit Court of Appeals unless the Court of Appeals requests or directs this Court to act on the matter. Accordingly, it is

ORDERED:

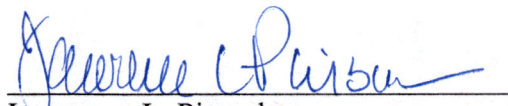
1. Spotted Elk must pay an initial partial filing fee of \$35 by September 21, 2019, made payable to the Clerk, U.S. District Court.
2. The institution having custody of Spotted Elk is directed that whenever the amount in Spotted Elk's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Spotted Elk's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(2), until the \$505 appellate filing fee is paid in full.
3. Spotted Elk's motion to appoint counsel (Docket 25) is denied.

DATED August 21<sup>st</sup>, 2019.

ATTEST:  
MATTHEW W. THELEN, CLERK



BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge